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# PRESS RELEASE

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## **Attorney General Stands Up for Regulation of Pharmacy Benefit Managers**

### ***Joins Bipartisan Coalition in Amicus Brief in Support of North Dakota Law Regulating Abusive Behavior of PBMs***

**BALTIMORE, MD (July 1, 2021)** – Maryland Attorney General Brian E. Frosh today joined a bipartisan coalition of 30 attorneys general in an [amicus brief](#) to the Eighth Circuit Court of Appeals in support of North Dakota laws that regulate abusive behavior of pharmacy benefit managers (PBMs), which have been challenged by the PBM industry’s national lobbying association.

The case, *Pharmaceutical Care Management Association (PCMA) v. Wehbi*, is on remand from the U.S. Supreme Court, which vacated the Eighth Circuit’s previous decision that ERISA preempts North Dakota’s laws regulating PBMs. The Supreme Court directed the Eighth Circuit to reconsider the case in light of its December 2020 decision in *Pharmaceutical Care Management Association v. Rutledge*. In *Rutledge*, the Supreme Court rejected the Eighth Circuit’s ERISA analysis and held that Arkansas had authority to impose various cost regulations on PBMs. For example, Arkansas could require PBMs to reimburse pharmacies for at least the amount pharmacies pay to acquire a drug, as other states do. Attorney General Frosh was one of 46 attorneys general who supported Arkansas in *Rutledge* in an amicus brief to the Supreme Court.

As Attorney General Frosh and the coalition write in today’s brief, they “have an interest in preserving states’ authority to regulate companies doing business in their states and in protecting their residents’ access to healthcare and shielding them from abusive business practices. To advance these interests, nearly all states regulate pharmacy benefit managers.” PCMA’s broad approach to federal preemption would “severely impede states’ abilities to protect their residents and potentially upend licensing and regulatory structures in nearly every state.”

“Maryland’s ability to protect its consumers from misleading or abusive practices engaged in by PBMs should not be constrained. ERISA was designed to protect consumers, not make them more vulnerable to unscrupulous businesses,” said Attorney General Frosh.

## **Abusive Business Practices of PBMs**

PBMs are intermediaries in the prescription pharmaceutical industry between prescription drug plans, pharmacies, and drug manufacturers. PBMs profit from fees charged to market participants and by reimbursing pharmacies less than the PBM is paid by plans for dispensing medications. PBMs have imposed self-serving protections that reduce reimbursement rates to pharmacies, maximize rebates to PBMs, and impose various confidentiality requirements. For example, PBMs have tried to prevent pharmacies from even telling consumers the actual cost of drugs. The PBM industry reaps hundreds of billions of dollars annually.

These business practices have harmed consumers, pharmacies, and states. Rural and independent pharmacies have especially struggled to survive when PBMs impose financially unsustainable conditions. PBMs have been largely unregulated for decades and are still largely unregulated at the federal level.

## **Background to North Dakota Case**

In the absence of meaningful federal regulations, North Dakota – like many states, including Maryland – passed laws regulating PBM-pharmacy interactions. The North Dakota laws at issue address several PBM business practices, including regulating certain fees that PBMs can charge pharmacies, what pharmacists may discuss with patients, and which drugs pharmacists are authorized to dispense.

In *Wehbi*, PCMA sued various North Dakota officials, alleging that federal law (ERISA and Medicare Part D) preempt these laws. On cross-motions for summary judgment, the district court rejected nearly all of PCMA’s arguments and ruled in North Dakota’s favor. PCMA appealed to the Eighth Circuit, which held that ERISA preempted North Dakota’s laws. The Supreme Court has vacated that decision in light of its decision in *Rutledge*. On remand, the Eighth Circuit court will decide whether ERISA or Medicare preempts North Dakota’s laws.

Joining Attorney General on the brief are the attorneys general of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Georgia, Hawaii, Illinois, Indiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, and Washington.

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